88-1110

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CASE NUMBER _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

CHARLES GILBERT HARDY
and BUDDY HUFFMAN
Petitioners

vs.

UNITED STATES OF AMERICA
Respondants

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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83 pp

QUESTIONS PRESENTED FOR REVIEW

Whether the warrantless detention of the Petitioners on an Interstate Highway for approximately one hour, absent probable cause, and a subsequent search of their vehicle is justified under Terry v. Ohio, and authorized as an exception to the warrant requirement of the Fourth Ammendment to the United States Constitution.

PARTIES TO THE PROCEEDINGS BELOW

Charles Gilbert Hardy amd Buddy Huffman, Petitioners in the present case, were the only persons involved as Defendants in the proceedings below.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
PARTIES TO PROCEEDINGS BELOW	i
TABLE OF AUTHORITIES .....iii,iv	
OPINION BELOW	2
JURISDICTION	2
STATUTORY PROVISIONS	3
STATEMENT OF CASE	
(i) Proceedings Below	3
(ii) Statement of Facts	6
REASONS FOR GRANTING THE WRIT	9
ARGUMENT	12
CONCLUSION	30
CERTIFICATE OF SERVICE	31
APPENDIX	32

TABLE OF AUTHORITIES

Page

Cases:

Delaware v. Prouse, 440 U.S. 648 (1968) 14

Dunaway v. New York, 442 U.S. 200 (1979) 14,18

Florida v. Royer, 448 U.S. 491 (1983) 18,25

Miranda v. Arizona, 348 U.S. 436 (1966) 17

Reid v. Georgia, 448 U.S. 438 (1980) 18

State of Georgia v. Buford, Whitfield Superior Court, Case 22, 339 (unreported) 4,27

Terry v. Ohio, 392 U.S. 1, (1968). i, 9, 13, 14, 23, 24, 29

United States v. Elmore, 595 F2d 1036 (11th Cir. 1979). 26

United States v. Brignoni-Ponce, 422 U.S. 873 (1975). 18

United States v. Mendenhall, 446 U.S. 544 (1980). 15,18

United States v. Place, 462 U.S. 692 (1983) 10,24

United States v. Sharpe, 470 U.S. 675 (1985) 20,21

United States v. Smith, 779 F2d 704 (11th Cir. 1986) 12

Statutes:

21 U.S.C. 841. 3

21 U.S.C. 848 3

Other Authorities:

Federal Rules of Criminal Procedure, Rule 11(a)(2) 5

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PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

The Petitioners, Charles Gilbert Hardy and Buddy Huffman, ask that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

On September 19, 1988 the Eleventh Circuit Court of Appeals issued its' decision in the appeal of the Petitioners, (See case no. 87-8855, Appendix), wherein the Court affirmed the conviction of Petitioners on charges of possession with intent to distribute cocaine and marijuana, and conspiracy to possess with intent to distrubute both substances, 21 USC 841, and 21 USC 846. A timely petition for rehearing was filed and denied on November 4, 1988, without opinion.

JURISDICTION

Jurisdiction for this appeal lies under Title 28 USC 1254 in that the Petition seeks review of a final decision of the Eleventh Circuit Court of Appeals.

STATUTORY PROVISIONS

21 USC 841 provides that:

> It shall be unlawful for any person to knowingly or intentionally manufacture, distribute, or possess, with intent to manufacture, distribute or dispense a controlled substance.

21 USC 846 provides that:

> Any person who attempts or conspires to commit any offenses defined under 21 USC 841 is punishable by fine, imprisonment of both.

STATEMENT OF THE CASE

Proceedings Below:

The Defendants, Charles Hardy and Buddy Huffmen were initially indicted in Georgia State Court, (Whitfield County

Superior Court, Dalton, Georgia.). They filed motions to suppress the evidence seized by state troopers. The state court combined their case with several similar cases which had occurred during recent months resulting from the "Nighthawk" program, for purposed of a consolidated hearing on the legality of the seizures. The evidentiary hearings on their motion proceeded. however, before a ruling, the United States Attorney in Atlanta assumed jurisdiction and initiated a federal prosecution. The state case was dismissed in favor of the federal proceedings. The State Court Judge, Charles Pannell, granted a motion to suppress evidence in the matter of State v. Floyd Buford, who was arrested by Nighthawk troopers on the same evening as Petitioners.

The Defendants subsequently entered

pleas of guilty in U. S. District Court pursuant to Rule 11 (a)(2) of the Federal Rules of Criminal Proceedure, and District Judge Harold Murphy authorized the Defendants to pursue their right of appeal on the legality of the search issue. They were sentenced to a term of five years in prison.

The Eleventh Circuit Court of Appeals affirmed the convictions. The questions raised before the Eleventh Circuit centered upon the stopping of the Defendants by a state trooper and the subsequent warrantless detention, without probable cause, for a time period of between fifty minutes and one hour and thirty minutes. The Court of Appeals, while affirming the conviction, acknowledged some difficulty over the duration of the detention. It is this

issue which the Petitioners now seek to have reviewed by this Court ... that is, was it lawful for the state trooper to detain the Defendants by the roadside for a time exceeding an hour, without probable cause or a warrant, while investigating alleged suspicious circumstances and awaiting the arrival of a drug dog from the adjoining county.

Statement of the facts:

Beginning in 1986, the Drug Enforcement Agency began to coordinate a project in Georgia, in conjunction with the Georgia State Patrol, known as "Operation Nighthawk". Under this program certain selected state patrol troopers were relieved of traffic enforcement duties and directed to drug interdiction efforts centering on Interstate Highways

I-75 and I-95. Nighthawk troopers were furnished specialized equiptment by DEA to assist their drug enforcement duties. This special equipment included a dash mounted video tape recorder. Troopers were instructed to use certain "characteristics" or profiles to determine which vehicles to detain and likewise which occupants to interrogate regarding possible drug possession.

On January 30, 1987 at 8:57 pm a Georgia State Patrol Officer, assigned to the "Nighthawk" operation stopped the vehicle of the Defendants on I-75 near Dalton, Georgia. The trooper had no prior information about this vehicle. He charged the driver with speeding (67 mph on an interstate highway). He detained the defendants from 8:57 pm until approximately 9:23 pm while he verified

via computer information regarding the driver. He also determined that there were no warrants outstanding against either defendant by a check of NCIC. He then issued a warning traffic citation, but ordered the vehicle to remain on the roadside. The trooper admittedly had no warrant for any continued detention nor did he have probable cause to detain either the vehicle or occupants. Acting on vague and non objective suspicions (the trooper admitted that it was only "a possibility" of criminality that he suspected) he detained the defendants on the roadside and called for a drug dog which was located in an adjoining county 25 miles away. He made this call at 9:23 pm. The dog arrived at 10:11 pm and began sniffing the defendants vehicle. At approximately 10:22 the dog allegedly

"alerted" and the car was searched. It took in excess of one hour from the time the dog was summoned until the search.

REASONS FOR GRANTING THE WRIT

The concept expressed by this Court in Terry v. Ohio, 392 U.S.1 (1968), has gradually been eroded to the point where the Court needs to re-address the issue. In the airport "profile" cases we have observed a gradual deterioration of Fourth Amendment rights to a significant extent. The present factual situation constitutes an obvious step forward by police in a progression from airport profile searches and now would apply such concepts to motorists on public highways.

Detentions in airports which have been held to close scrunity by this Court

are certainly less intrusive than detentions in most public places. Due to the presence of security devices and other inspections in airports the public has less expectation of privacy therein. Even so, this Court has not failed to apply the Fourth Amendment in airport stops. The procedures utilized by police in the present case present a clear picture of the potential for excesses to come if clear limitations are not placed upon the scope, duration, and conditions of so called Terry stops, not just in airports but also on the public highways. In United States v. Place, 462 U.S. 692 (1983), this Court did not find it necessary to set outside limits on the length of a Terry detention. We urge that the Court should review the present case in that not only are the reasons for

the detention herein marginal, at best, but also, because the intensity and duration thereof is extreme. To allow such a detention effectively eleminates probable cause as a requirement for arrest.

ARGUMENT

Police will expand the scope of permissible authority given them beyond any lawful limit unless the limit of that authority is clearly defined. After winning judicial approval for the concept of warrantless airport detentions based upon "articulable suspicion", DEA now has moved to the public highways with a similar concept. (See United States v Smith, 799 F.2d 704 [11th Cir., 1986]). The "Nighthawk" program involved in Petitioner's case was a DEA program enacted in 1986 in Georgia in concert with the Georgia State Patrol. Drug interdiction is the forcus of "Nighthawk" rather than traffic enforcement. Today motorists are confronted with detentions based on untested "profile" concepts

similar to those seen earlier in airport cases. While interdiction of drug traffic is a highly commendable objective, the zeal of officers to detect drugs or other, real and imagined violations, will continue to create confrontations between police and the Constitutional freedoms which citizens are entitled to have preserved. From the supposedly "unobtrusive", momentary and limited detentions allowed in Terry v Ohio, 392 U.S. 1, (1968), and its progeny, we have reached the point where Georgia motorists are now commonly stopped and detained for times exceeding one hour. The present case presents the next and natural progression of the Terry concept which should be decided by this Court. It is necessary to place limitations not only upon the onset of

the detention, but also upon the duration and conditions of the detention.

In Terry, this Court permitted an officer to conduct a brief investigative stop of a citizen where the circumstances were accompanied by specific, articuable facts which gave rise to a reasonable suspicion of criminal misconduct. By its very concept, in order to be allowable, a Terry stop must be unobtrusive, momentary and limited in scope. As stated in Terry the detention must be, "a minor inconvenience and petty indignity" wherein a citizen is only momentarily restrained. If the inquiry by police revealed nothing, the inconvenience to the citizen is so minor as to be inconsequential and harmless. See Delaware v Prouse, 440 U.S. 648, (1986), Dunaway v New York, 442 U.S. 200 (1979),

and United States v Mendenhall, 446 U.S. 544 (1980). Any other form of detention would constitute an arrest requiring probable cause. A review of the present facts shows quite clearly that the instant detention goes well beyond any Terry stop yet approved of by this Court. The defendants were northbound on I-75 traveling from Florida to Indiana. They were stopped for speeding. (67 mph in a 55 mph zone) After 25 minutes during which time he checked the defendants through NCIC, the trooper gave them a warning ticket. Rather than release them, he ordered the driver, Huffman, to stand at the rear of the vehicle while he sought permission from Hardy, the owner, to search the car. Hardy refused and the trooper called for a drug dog. (The dog was in an adjoining county approximately

25 miles away). They remained on the Georgia roadside by virtue of the troopers order for approximately one hour until the dog arrived and their car searched.

The Court of Appeals determined that there were articulable suspicions justifying the detention. This finding was based upon certain alleged inconsistancies between the statements given by each defendant, and because Huffman didn't look like "the Continental automobile type". Yet, the trooper acknowledged that there was nothing in his conversation with either defendant which was more than idle gossip, and that neither defendant could have known that the conversation was being scrutinized for accuracy. The defendants had no reason for volunteering complete

information about either themselves or the nature of their trip. Notwithstanding the artificial nature of the alleged "gaps" and "inconsistancies" in such conversation, they alone form the basis for an hour long detention. We urge that the responses of the Defendants, wherein the trooper admittedly tried to artificially induce inconsistances, (absent miranda warnings) were insufficient to provide an articulable basis for the detention. [1].

This Court has reviewed many airport and other stops and considered numbers of

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1. There was only one alleged discrepancy in the information given the trooper by the Defendants. The Court of Appeals indicated that Huffman claimed that the two had been on a two week vacation, and that they had stayed with friends. Hardy allegedly

factors which lend to a determination of whether or not there exists a reasonable articulable suspicion. See Florida v. Royer, 460 U.S. 491 (1983); United States v. Mendenhall, 446 U.S. 544 (1980); Dunaway v. New York, 442 U.S. 212; Reid v. Georgia, 448 U.S. 438 (1980); United States v. Brignoui-Ponce, 422 U.S. 873 (1975). The factors present herein are marginal, and basically indicate that it was the refusal by Hardy to permit a search of his car which generated the

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footnote 1. (cont.)

indicated that they had been in Ft. Myers for four days, and while there had stayed in Hardys' trailer. These statements are not necessarily inconsistant and the trooper admitted he did not try to clarify the details.

suspicion of the officer. The non-objective reasons for the suspicions of the trooper were contrasted by Appellants testimony wherein they denied many of the comments attributed to them. The video tape of the incident (filmed from the dash mounted video camera) was strangely inactive and silent during these alleged conversations.

We submit that the mere fact that two people about whom police know

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footnote 1. (cont.)

The Court of Appeals acknowledged that the allegedly inconsistant statements were based upon an unclear and imprecise recollection of the trooper who testified that he could not recall the exact questions he asked or the specific responses of the Defendants. The matter was ambiguous at best. (See opinion below, footnote 1.).

nothing and have no reason for suspicion, seem reluctant to give information about themselves (especially when under no duty to do so) cannot form a reasonable basis for concluding that they are violating some unspecified law. In fact, the trooper acknowledged that it was only the "possibility° that the car contained contraband which initiated his desire to search. When Hardy refused to consent, the "possibility" became "suspicion".

The Court of Appeals in arriving at their decision relied heavily upon this Courts decision in United States v. Sharpe, 470 U.S. 675, 105 S. Ct. 1568 (1985). The cases are distinguishable! In Sharpe, it was clear that the delay and duration of the detention was caused by the fact that one of the suspects fled. It took an hour for police to

apprehend him and return him back to the site where the co-defendant was detained. It was not surprising that the delay, thus caused, was not attributable to the police, but rather to the suspects. Therefore, Sharpe does not supply authority that such a lengthy detention is permissable.

We urge that the detention of Petitioners was of such length and also under such conditions as to constitute an arrest rather than a Terry stop. The Court of Appeals in considering the time of detention deleted 11 minutes from the time of the detention by concluding that the period of time from 9:23 pm until 9:34 pm was not a part of the investigative stop. We disagree, and while this is a relatively short time, urge it should be included. At 9:23 pm

the trooper exited his car to give Huffman a warning citation. He had already "run" the suspects on NCIC. He knew that Indiana verified Huffman's drivers license. As he got out of his patrol car, the trooper turned on the video camera. By his own admission, he had at least by that time (9:23 pm) terminated any traffic stop. He acknowledged that he was conducting a narcotics investigation to the exclusion of any other reason for the detention. He ordered Huffman (in a T shirt and shoeless) to remain at the rear of his (Huffmans) car, while the trooper asked Hardy for permission to search. He questioned Hardy, urging his signature on a consent for search form, and also questioned him about his reasons for refusing to permit a search. This

occurred from 9:23 until 9:34. The Court of Appeals omitted this eleven minute detention from their computation of the duration of the investigative stop. We believe that this time clearly should be included. What else was being accomplished if it was not an investigation of the troopers suspicions? Thus the actual duration of the investigative stop exceeds one hour. (9:23 pm, when the ticket was given to 10:30 pm).

As noted by Justice Brennan in his concurring opinion in the Place decision, Terry permitted only brief investigative stops and extremely limited searches based upon reasonable suspicion. To permit otherwise would be to allow the Terry exception to swallow the Fourth Ammendment rule. (Terry, at 417) The

hydraulic pressures to water down the Constitutional rights of citizens, referred to by Justice Douglas in his dissent in Terry v. Ohio can presently be seen in action. From what was initially a rarely permitted and narrowly drawn exception to the warrant requirement born in Terry, we have moved to the position taken by the Eleventh Circuit allowing an hour long stop while police tried to gather enough information to conduct a search.

In Place this Court made it clear that the duration of a stop is not the only factor by which the legality of a detention is determined. The conditions of the detention, the intensity, and the intrusive nature thereof are also important to a determination of the true legal character of the detention.

With regard to the circumstances of the detention, we would note that this stop occurred on a busy interstate highway. The defendants were detained on a roadside, on a winter evening. They were in public view and subjected to the natural embarrassment resulting therefrom. Both the trooper and the suspects complained of the cold. Huffman was wearing a T-shirt and was shoeless. The defendants repeatedly asked to be allowed to leave or else go to a restaurant at the next exit to carry out the investigation. At the time when the dog arrived they were ordered into the troopers car. At other times they were also seated in the troopers car.

In the Royer case this Court noted that the 15 minute delay of a traveler was unacceptable and therein stated that

many detentions, while investigative, are none the less violative of the law. The police may not verify the detention by what they later find.

As we have noted, the facts of the present detention are far more offensive than those in Place or in most of the airport cases. An hours wait on a heavily traveled interstate highway, on a winter night, is more intrusive than the 15 minutes wait in an airport lounge. (Also see United States v. Elmore, 595 F2d. 1036 [11th Circuit]). In addition, there can be no question but that Huffman and Hardy were not free to leave, as the trooper so stated to the Magistrate during the suppression hearing. In fact, they repeatedly asked to leave because of the length of the detention, and the cold weather.

The Court below concluded that the nearly 40 minute delay in getting the drug dog to the scene was excusable because the police could not have anticipated the defendants travel. We would conversely argue, that the trooper was a part of a special drug interdiction unit. The evidence below showed that the Nighthawk squad made at least one other arrest that same evening.[2] Troopers routinely make such stops in this areas. The Nighthawk team is based nearby. Thus

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2. Floyd Buford was arrested approximately six miles from the scene of Petitioners' arrest on the same evening, by Nighthawk troopers. See, State of Georgia v. Buford, Whitfield County Superior Court, Case no. 22339. The facts in the Buford case closely parrallel the present case. Buford allegedly concented to the search when told that a drug dog would be brought to the scene. The Georgia State Court Judge, in a consolidated motion to

he was aware of a likely need for a drug dog on a regular basis. The burden of complying with constitutional enforcement concepts lies with the police. A citizen should not have to suffer a lessening of rights simply because he was detained by troopers patroling Whitfield County while their dog was in Murray County. (and the dog handler at a high school basketball game). If the trooper is to use the "profile" or "characteristic" concept he should be required to have the support and back up available to justify his decision to detain citizens on suspicion.

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suppress evidence involving many "Nighthawk" cases determined that the interdiction program was in progress on January 20, 1987, and that troopers used a "profile" to determine which vehicles to detain and search. He suppressed the evidence in the Buford case.

The "good faith" argument advanced by the Eleventh Circuit decision would seek to justify a lengthy, intrusive, and otherwise unlawful detention if the police are doing the best that they can. This concept approaches the problem from the wrong angle, in fact, 180 degrees wrong. The test to be applied is not whether the police acted promptly, but rather was the detention of such duration, irregardless of what reason, that it exceeds the "marginally intrusive", "brief", "momentary" and "petty inconvenience" stops permitted under this Courts concept in Terry. If the time is excessive, or the conditions too intrusive, no amount of good faith should justify the wrongful detention. Should such stops be permitted, police every where, (not just trained airport

agents) will be able to detain any motorist for periods of an hour and upwards for reasons which admittedly do not approach probable cause. We urge that Terry should not be eroded to such an extent. It seems clear that the Eleventh Circuit was somewhat troubled over the duration of the detention. Both Judge Kravitch, and also Judge Hill, in a separate concurring opinion used language indicating their concern over this aspect of the case. We feel that the issues herein raised regarding the rights of citizens on the public highways, who have violated no visible law, other than minor traffic offenses, should not be subjected to detentions of such intensity and scope as will be conducted in the future should this case be affirmed. We ask this Court to review the Constitutional impact of

such proceedures and to grant this Writ of Certiorari.

CONCLUSION

For the reasons enumerated herein, the Petitioners, CHARLES GILBERT HARDY, and BUDDY HUFFMAN, respectfully request that this Court grant the Writ of Certiorari.

Respectfully submitted,

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State Bar of Ga. 547500

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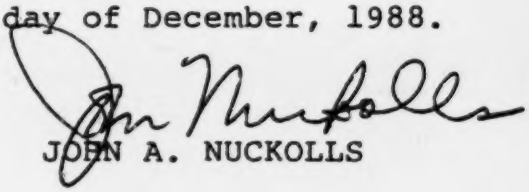
State Bar of Ga. 284900
Supreme Court Admission
1972

CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the foregoing PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT upon the Solicitor General, United States Department of Justice, Constitutuion Ave, N.W., Washington, D.C. 20530, and upon JULIE CARNES, Assistant United States Attorney, 75 Spring Street, Atlanta, Georgia, 30303, by depositing a copy thereof into the United States Mail with sufficient postage attached thereto to ensure delivery.

This the 12th day of December, 1988.



JOHN A. NUCKOLLS

APPENDIX

UNITED STATES of America
Plaintiff-Appellee
v.
Charles Gilbert HARDY,
and, Buddy HUFFMAN
Defendants-Appellants

Case No. 87-8855

United States Court of Appeals
Eleventh Circuit

September 19, 1988

before HILL and KRAVITCH, Circuit Judges, and TUTTLE, Senior Circuit Judge.

KRAVITCH, Circuit Judge,

Appellants Charles Gilbert Hardy and Buddy Huffman were indicted on one count of possession with intent to distrubute cocaine, in violation of 21 USC 841, one count of possession with intent to distribute marijuana, also in violation of 21 USC 841, and one count of conspiracy to possess cocaine and marijuana with intent to distribute, in violation of 21 USC 846. After holding an

evidentiary hearing on the circumstances of appellants' detention by a Georgia state trooper, a Magistrate concluded that the seizure did not violate the fourth ammendment and recommended that the narcotics found as a result of that seizure not be supppressed. The district court adopted the magistrate's report and recommendation. Pursuant to Fed.R.Crim. P. 11(a)(2), appellants, with the concent of the district court and government, entered conditional pleas of guilty and preserved their rights to appeal the suppression order. They now appeal that ruling, and we affirm.

I.

On the evening of January 30, 1987, Trooper Michael Ralston of the Georgia State Patrol was investigating an

accident on Interstate Highway 75 in northwestern Georgia when he observed a speeding northbound automobile. After completing his investigation of the accident, Ralston pursued the speeding car and eventually overtook a Lincoln Town Car that was passing several other vehicles. Ralston determined by use of radar that the Town Car was traveling at 67 miles per hour in a zone with a 55 mile per hour speed limit. At approximately 8:57 p.m., Ralston turned on the blue light of his patrol car and pulled the Town Car to the side of the road.

Ralston asked the driver of the Town Car (Huffman) to produce a driver's license and vehicle registration. Huffman was unable to provide a driver's license or any other form of

identification. Huffman told Ralston that he had lost his wallet and driver's license while on vacation in Florida. Huffman further said that he and the passenger of the car (Hardy) had spent a couple of weeks in Fort Myers, Florida, that they had been fishing, and that they had stayed with friends in Fort Myers. Huffman advised Ralston that the car belonged to the passenger, whom Huffman knew only as "Charles" or "Charlie" and whose surname Huffman did not know.

Ralston then approached Hardy for the vehicle registration, which Hardy provided. The car was registered and titled to Hardy's wife Karen, of Elkhart, Indiana. In response to Ralston's questions, Hardy stated that the two had been to Fort Myers for four days and that they had stayed in a trailer owned by

Hardy.[1] Hardy also told Ralston that he knew Huffman only as "Buddy and did not know Huffman's surname.

The initial questioning of Huffman and Hardy lasted approximately fifteen minutes. Ralston returned to his patrol

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1. On direct examination, Ralston testified that Huffman told him that "he" had stayed with friends in Florida, R3-34. Counsel for the government subsequently asked, "Where did Mr. Huffman say they had stayed?" Ralston replied "At friends." Government counsel further asked Ralston, "And where did Mr. Hardy say they had stayed?" Ralston answered, "He advised that he had a trailer in Fort Myers [sic]." R3-37.

On cross-examination, Ralston admitted that he was not absolutely certain whether he asked Hardy "where did you all stay or where did you stay" and consequently could not "say precisely whether [Hardy] was answering a question as to whether they stayed or whether one of them stayed." Defense counsel stressed this point at the suppression hearing, arguing that there was not necessarily any inconsistency between the two men's accounts of where they had stayed in Fort Myers, and that further

car and ran a computer check to determine whether Huffman's driver's license was valid and whether Huffman was wanted for any crimes. After approximately ten minutes, Ralston learned that Huffman possessed a valid license and was not wanted. Ralston nonetheless remained suspicious about the men, due to their

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Footnote 1 (cont.)
questioning by Ralston might have revealed that Huffman had stayed with friends but Hardy stayed at the trailer.

The magistrate found that "Huffman stated that...they had stayed with 'friends'", whereas "[Hardy] stated that they had stayed in a trailer owned by him." We interpret these sentences as a factual determination that both men told Ralston that they had stayed together in Fort Myers, but that the two men gave different places as the location of their stay. This finding is not clearly erroneous. furthermore, even if the two men's stories could have been harmonized on this point, there were other inconsistencies in their stories and gaps in their knowledge of each other sufficient to give Ralston a reasonable suspicion of narcotics trafficking.

inability to identify each other's surnames, the inconsistencies between their accounts of the fishing vacation, and Huffman's lack of identification. As he exited his patrol car, Ralston activated a video camera mounted on his dashboard.

Ralston gave Huffman a warning for the speeding offense and returned the vehicle registration to Hardy. Ralston asked Hardy whether he would consent to a search of the automobile. Hardy initially acceded to this request but withdrew his permission after reading a printed consent form provided by Ralston. Ralston next approached Huffman for consent to search the vehicle. Huffman seemed willing to give his permission to search the car, or at least

his own suitcase in the trunk.[2] After further discussion, however, Ralston concluded that Huffman lacked authority to grant consent to search over Hardy's objection. His suspicions not dispelled, Ralston informed the men that he was detaining them on the highway until he could obtain a narcotics dog to "sniff" the car and could run a more extensive computer check on persons wanted for drug offenses through a Drug Enforcement Administration clearinghouse.

Ralston radioed the Sheriff's Department of Murray County, Georgia, to request a narcotics dog. Sergeant Peggy Cloer, the dispatcher, punched a time

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2. The videotape is unclear on this point.

card indicating that the call was received at 9:34 p.m. Cloer called Leroy Green, the handler of the narcotics dog, who was attending a high school basketball game 20 to 30 miles from where Huffman and Hardy were being detained. Green left immediately and, after retrieving the most accessible trained dog, drove to the site of the stop. He radioed the Sheriff's Department upon his arrival at 10:11 p.m. Cloer again acknowledged the communication by punching a time card.

Green's dog alerted to the presence of narcotics in the car's trunk. Concluding that he now had the right to search the car without Hardy's consent, Ralston opened the trunk by pushing the electronic release button in the dashboard. In the trunk Ralston found a

small suitcase and a small blue travel bag; inside the blue bag were three plastic bags containing a substance that Ralston believed to be marijuana. Ralston formally arrested Huffman and Hardy and placed them in the patrol car. A further search of the car revealed a brown paper bag containing three kilograms of a substance resembling cocaine, another paper bag containing $2,000.00 in cash, and a long butcher knife.

II.

[1] We first consider whether Ralston was justified in stopping the Town Car for speeding.[3] Appellants argue that Ralston's traffic stop was a mere

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3. The government argues that Huffman

pretext for the investigation, without reasonable suspicion, of narcotics offenses. As we have stated numerous times, the proper inquiry in a case involving allegations of a pretentual seizure is "whether a reasonable officer would have made the seizure in the

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Footnote 3 (cont.)

3. The government argues that Huffman lacks standing to contest the search of the automobile, or, in the alternative, that Huffman abandoned any privacy interest he had in the contents of the car by inviting Ralston to search the trunk. The magistrate agreed with the government's argument on both points. Given that the substantive issues concerning the reasonableness of the detention are identical as to both appellants, and that our resolution of those issues compels affirmance of the district court's decision not to suppress the evidence, we decline to address the standing and abandonment arguments.

absence of illegitimate motivation." United States v. Smith, 799 F.2d 704, 708 (11th Cir.1986); accord United States v. Bates, 840 F.2d 858, 860, 1988 WL 18,329 (11th Cir.1988); United States v. Miller, 821 F.2d 546, 549 (11th Cir.1987).

There is no doubt that when Ralston pulled the Town Car to the side of the road he had probable cause to believe that the driver[4] of the vehicle had

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4. In Smith, we relied on United States v. Cruz 581 F.2d 535 (5th Cir.1978)(en banc). Cruz held that a "traffic stop" purportedly made to give a citation for an illegal U-turn was a mere pretext for "hunting for illegal aliens" without reasonable suspicion. See id. at 542. The new Fifth Circuit abandoned Cruz in United States v. Causey, 834 F.2d 1179, 1987 WL 23,392 (5th Cir.1987)(en banc), but Cruz remains binding authority in this circuit under Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir.1981)(en banc).

violated a Georgia traffic law. To support their claim that the seizure was nonetheless pretextual, appellants place chief reliance on Trooper Ralston's participation in "Operation Nighthawk," a program involving the deployment of Georgia state troopers along interstate highways to interdict persons transporting narcotics from Florida to northeastern metropolitan areas. At the suppression hearing, appellants introduced a memorandum by the Commissioner of the Georgia State Patrol stating that state troopers involved in Operation Nighthawk would be used for "specifically targeting narcotics 'mules' traveling through Georgia to and from Florida, "would be deployed" during peak drug traffic hours," and would "concentrate on northbound traffic,

[remaining] on the interstate as much as possible." According to appellants, this memorandum proves that the Georgia State Patrol largely abandoned its role of enforcing traffic laws and converted to a drug investigation force. The memorandum states, for example, that

" 'Nighthawk' patrols will not investigate accidents, unless a major collision on an interstate highway requires their assistance." [5]

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5. Ralston's testimony tended to contradict the impression of Operation Nighthawk that one might obtain from reading this memorandum. Ralston testified, for example, that Nighthawk was just a "philosophy" of heightened awareness about drug trafficking; that "while [a trooper is] out on normal patrol,...if they ran across a vehicle that they had suspicions to believe that possibly had narcotics, after they have stopped the vehicle for a traffic stop then the officer would be more apt to particularly pick up on the things that

The crucial defect in appellants' argument is that Operation Nighthawk expired before the date of their arrest. Ralston testified that the special deployment of Nighthawk patrols on the interstate highways ended in October or November of 1986, and this testimony was not rebutted. Ralston admitted on cross-examination that "the philosophy" of

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Footnote 5 (cont.)
he would need to pick up on." R3-74-75. Ralston further testified that "we have a particular policy that no vehicle will be stopped solely based on a suspicion that the vehicle is carrying contraband." R3-149. In short, Ralston described Operation Nighthawk as merely heightened awareness and understanding of the use of interstate highways for drug trafficking rather than a full-scale redeployment of the Georgia State Patrol for purposes of drug interdiction.

The district court did not resolve the apparent conflict between Ralston's testimony and the Commissioner's memorandum. We find it unnecessary to

Operation Nighthawk remained, but according to Ralston's testimony, this "philosophy" meant no more than troopers being "aware of what was occuring [i.e., drug trafficking]." R3-83. There is no constitutional violation in peace officers simply having an increased understanding of circumstances suggesting criminal activity; like other professionals, state troopers must be trained.[6] As our predecessor court

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Footnote 5 (cont.)
resolve the conflict as well, because we conclude that Ralston's decision to stop appellants was not undertaken as part of Operation Nighthawk.

6. Appellants do not suggest that state troopers, as such, are constitutionally prohibited from investigating criminal activity. The Georgia Code provides that state troopers "shall prevent, detect, and investigate violations of the criminal laws of this state, any other state, or the United States which are

stated, "if the initial stop was legal, the [officer] had the duty to investigate suspicious circumstances that then came to his attention." United States v. Cruz, 581 F2d 535, 539 (5th Cir. 1978) (en banc).

Ralston's testimony established that his decision to stop the Town Car was made as part of a routine traffic investigation. Ralston had not spent the day laying in wait for northbound cars from Florida. Cf. United States v. Miller, 821 F2d at 547 (state trooper parked perpendicular to northbound lanes, with headlights illuminating occupants of passing vehicles). Ralston left the State Patrol post at 8:00 p.m. to investigate a traffic incident - a duty that indeed, was incompatible with the provisions of Operation Nighthawk. He

decided to pursue the Town Car only after he observed it speeding. He engaged his blue light after he saw the Town Car pass numerous other vehicles and after he determined, by reference to his radar unit, that the Town Car was exceeding the speed limit. A "drug courier profile" played no role in this calculus. Until the Town Car stopped, Ralston did not know the state in which the car was registered or the sex and age of the occupants. CF. United States v. Smith, 799 F2d at 706 (state trooper decided to pursue vehicle only after he observed that car was occupied by two young males). We therefore agree with the magistrate that "there is no credible evidence that the stop of the defendants' car was pretextual."

III.

[2] At approximately 9:25 p.m., Ralston gave Huffman a warning for the speeding offense, ending the investigation of the traffic violation. The next few minutes were occupied by Ralston's attempt to secure consent to search the car from either Hardy or Huffman, by Hardy's initial grant and subsequent withdrawal of consent, and by consultation between the two appellants. upon concluding that consent was not forthcoming, Ralston informed the appellants at approximately 9:34 p.m. that he would detain them pending the arrival of a narcotics dog. In our view, an investigative "stop" of appellants began at 9:34 p.m.[7] We address whether

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7. We have reviewed the videotape and

Ralston was justified at that point in detaining appellants.

The reasonableness of Ralston's decision to detain the appellants is governed by Terry v Ohio, 392 U.S. 1, 88 S.CT. 1868, 20 L.Ed2d 889 (1968), and its progeny. The officer must be able to point to "specific and articulable facts which, taken together with rational inferences from those facts," id. at 21, 88 S.Ct. at 1880, justify a "reasonable and articulable suspicion that the person

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are persuaded that Ralston's brief attempt to secure consent to search the automobile was entirely noncoercive. "Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." Terry v. Ohio, 392 U.S. 1, 19 n. 16, 88 S.CT. 1868, 1879 N. 16, 30 L.Ed.2d. 165 (1984)(Per curiam); United States V. Espinosa-Guerra, 805 F.2d 1502, 1507 (11th Cir. 1986).

seized is engaged in criminal activity. Reid v. Georgia, 448 U.S. 438, 440, 100 S.Ct. 2752, 2754, 65 L.Ed2d 890 (1980) (per curiam). We have little difficulty concluding that the decision to detain appellants was valid under Terry.

This is not a "drug courier profile" case. In making the decision to detain appellants, Ralston did not rely solely on "personal characteristics shared by drug couriers and the public at large,...without any indication that those [characteristics describe persons] predominantly, or even mainly, engaged in an ongoing crime." United States v. Sokolow, 831 F2d 1413, 1420 (9th Cir. 1987), cert. granted, __U.S.__, 108 S.Ct. 2033, 100 L.Ed2d 618 (1988).[8] True,

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8. As the government notes, we have

Ralston knew that Huffman and Hardy were males of apparently different ages and "lifestyles" traveling north from Florida, but he also knew a great deal more than that. He knew that Huffman claimed that the two had taken a two-week vacation and had stayed with friends whereas Hardy said that they had been in Fort Myers for only four days and had stayed in Hardy's trailer. He also knew

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8. As the government notes, we have never held that the use of a "drug courier profile" is per se unconstitutional. We have stated, however, that "a match between certain characteristics listed on the profile and charactertistics exhibited by a defendant does not automatically establish reasonable suspicion." United States v. Berry, 670 F.2d 583, 600 (5th Cir. Unit B 1982)(en banc)(binding authority under Stein v. Reynolds Securities, Inc., 667 F.2d 33(11th Cir.1982)); see also Reid v. Georgia, 448 U.S. 438, 100 S.Ct. 2752, 65 L.Ed.2d 890(1980);(per curiam). Moreover, we held in Smith that certain

that neither Huffman nor Hardy knew the other's last name, a circumstance that quite reasonably raised in Ralston's mind a suspicion that the two men had not taken a vacation in Florida but had come together for a brief, illegal business transaction.[9] Finally Ralston knew that

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innocuous characteristics such as traveling from Florida and operating a car with an abundance of caution, even in combination, could not support a reasonable suspicion of criminal activity. See United States v. Smith;, 799 F.2d at 708 n. 5. A useful contrast to Smith is United States v. Espinosa-Guerra, 805 F.2d 1502(11th Cir.1986). In Espinosa-Guerra, a federal agent learned the name under which the defendant was traveling and the telephone number that the defendant had given to the airline as his home number, called the telephone number, and discovered that no one at that number had any knowledge of anyone by the name that the defendant had used to make the reservation. Id. at 1508. This investigation gave the agent a reasonable suspicion that the defendant was traveling under an alias.

9. Ralston testified that drug couriers

Huffman was unable to give a satisfactory account of Hardy's line of work. The videotape reveals that Ralston asked Huffman about Hardy's occupation immediately after giving Huffman the warning ticket. Huffman replied that Hardy was retired, or that he "had money," or that he owned a bar, or that he ran a factory. For two friends who supposedly had taken a fishing trip to

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Footnote 9 (cont.)
who are apprehended while traveling together frequently do not know each other's names. R3-179. At the suppression hearing, counsel for appellant suggested that Hardy and Huffman did not reveal each other's last names to Ralston because they thought they were making only idle conversation with Ralston and did not understand that failure to reveal the surnames would be significant. The magistrate did not comment on this argument, but we view it as implausible.

Florida together, Hardy and Huffman knew remarkably little about each other. The gaps and inconsistencies observed by Ralston created a reasonable suspicion justifying the investigative stop.

IV.

[3] We consider finally whether the investigative detention of appellants was sufficiently limited in scope and and duration to remain within the bounds permitted by Terry v. Ohio and not ripen into a full-scale arrest unsupported by probable cause. Consideration of this issue requires reference to a line of Supreme Court cases culminating in United States v. Sharpe, 470 U.S. 765, 105 S.Ct. 1568, 84 L.Ed2d 605 (1985), and to our own decision in United States v. Espinosa-Guerra, 805 F.2d 1502 (11th

Cir.1986).

Sharpe teaches that in distinguishing a true investigative stop from a de facto arrest, we must not adhere to "rigid time limitations" or "bright line rules," 470 U.S. at 685, 105 S.Ct. at 1575, but must use "common sense and ordinary human experience." Id.; accord United States v. Place, 462 U.S. 696, 709, 103 S.Ct. 1637, 1645, 77 L.Ed2d 110 (1983) (declining to adopt "outside time limitation" for permissible Terry stop). Several issues and circumstances are deemed relevant to the analysis, including the law enforcement purposes served by the detention, the diligence with which the police pursue the investigation, the scope and intrusiveness of the detention, and the duration of the detention. See Sharpe,

470 U.S. at 685-86, 105 S.Ct. at 1575; Espinosa-Guerra, 805 F.2d at 1510; see also United States v. Alpert, 816 F.2d 958, 964 (4th Cir. 1987) (relying on similar list of factors).

Turning first to the law enforcement purposes served by the detention of appellants, the most important factor is whether the police detained appellants to pursue a method of investigation that was likely to confirm or dispel their suspicions quickly and with a minimum of interference. See Sharpe, 470 U.S. at 686, 105 S.Ct. at 1575. A Terry stop is justified to give the police an opportunity to engage in brief and nonintrusive investigation techniques, such as noncustodial questioning of the detained person. See id. at 678-69, 105 S.Ct. at 1571-72 (suspect was detained

for 20 minutes so he could be questioned by more experienced drug enforcement agent) . A Terry stop cannot be used as the basis of a "full search" that would normally be warranted only by the existence of probable cause, consent, or a valid arrest. See United States v. Place, 462 U.S. at 706, 103 S.Ct. at 2644; Florida v. Royer, 460 U.S. 491, 499, 103 S.Ct. 1319, 1325, 75 L.Ed.2d 229 (1983) (plurality opinion). Nor may the police use an investigative stop to subject a suspect to custodial interrogation that would ordinarily require formal arrest and Miranda warnings. See Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979).

The canine sniff ordered in this case is the kind of brief, minimally

intrusive investigation technique that may justify a Terry stop. As the Supreme Court noted in Place, a canine sniff does not require the opening of luggage and does not reveal intimate but noncontraband items to public view. "[T]he manner in which information is obtained through this investigative technique is much less intrusive than a typical search." Place, 462 U.S. at 707, 103 S.Ct. at 2644; see also Florida v. Royer, 460 U.S. at 505-06, 103 S.Ct. at 1328-29 (suggesting that police questioning of suspect may not be justified under circumstances where canine sniff would confirm or dispel suspicions). Nor does a canine sniff involve the time-consuming disassembly of luggage or an automobile frequently required in a thorough search for

contraband.[10]

The second factor in the Sharpe calculus, the diligence of the police in pursuing the investigation, is not in serious dispute here. Ralston radioed to the Murray County Sheriffs Office

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10. In United States v. Thomas, 757 F.2d 1359, 1366067 (2d Cir.), cert denied in pertinent part sub nom. Wheelings v. United States, 474 U.S. 819, 106 S.Ct. 67, 88 L.Ed.2d 54 (1985), the Second Circuit held that the police could not conduct a canine sniff of the outside of a suspect's residence without a search warrant and probable cause. The Thomas court distinguished Place by noting that the canine sniff in Place occurred in an airport, whereas in Thomas the police were attempting to obtain information about material secreted within a suspect's home. "[T]he defendant had a legitimate expectation that the contents of his closed apartment would remain private, that they could not be #sensed' from outside his door. Use of the trained dog impermissibly intruded on that legitimate expectation." Id. at 1367.

Assuming without deciding that the

immediately upon deciding that a canine sniff was appropriate; Cloer immediately contacted Leroy Green; Green immediately retrieved the narcotics dog and proceeded to the site of the stop. This case is

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Footnote 10 (cont.)
Thomas decision is correct, we view the canine sniff of the automobile in this case as more like the sniff approved in Place than the one condemned in Thomas. Thomas involved an attempt to intrude on the privacy of the home, where fourth amendment protections are at their peak;. See Payton v. New York, 445 U.S. 573, 589, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). The legitimate expectation of privacy that society recognizes in the contents of an automobile is significantly less than that attending a home or office. South Dakota v. Opperman, 428 U.S. 364, 367, 96 S.CT. 3092, 3096, 49 L.ED.2D 1000 (1976). Even if one has a greater expectation of privacy in the contents of an automobile trunk than in luggage carried through an airport, a highly debatable point, a canine sniff of a car is "minimally intrusive" wtihin the meaning of cases such as Place.

not like Place, where the federal agents knew in advance when Place would be arriving in New York but made no arrangements to meet him with a narcotics dog. The Georgia State Patrol could not have anticipated appellants' journey, and appellants make no suggestion that every state trooper must be accompanied by a narcotics dog. The state patrol did have a trained dog available within twenty-five miles, at distance we find sufficiently short given the rural nature of the area. Cf. United States v. Borys, 766 F.2d 304, 314 (7th Cir.1985) (DEA agents required to have narcotics dog "readily available," not "immediately available"), cert. denied, 474 U.S. 1082, 106 S.Ct. 852, 88 L.Ed.2d 893 (1986); United States v. West, 731 F.2d 90, 92 (1st Cir.1984) (DEA agents not required

to "have a dog waiting near the gate whenever a sniff test of a known suspect's baggage is either probable or possible"), cert. denied, 469 U.S. 1188, 105 S.Ct. 956, 83 L.Ed.2d 963 (1985).

We consider next the actual scope and intensity of the intrusion. Although appellants have attempted to portray the conditions of their detention as virtually the equivalent of custodial arrest, the video-tape establishes that this was not the case. Appellants were not removed to an office or a police station, a factor that the Supreme Court and this court have found significant in distinguishing Terry stops from custodial arrests. See Florida v Royer, 460 U.S. at 502-03, 103 S.Ct. at 1326-27; Dunaway v. New York, 442 U.S. at 212, 99 S.Ct. at 2256; United States v. Espinosa-

Guerra, 805 F.2d at 1509; United States v. Berry, 670 F.2d 583, 602 (5th Cir. Unit B 1982) (en banc). Ralston did not question the appellants during the waiting period, nor did he place them in the back of the patrol car or insist that they remain outside.[11] Hardy and Huffman

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11. We realize that in Place the Supreme Court stated that prolonged detention of a traveler's luggage can lead to a de facto arrest of the traveler without probable cause, even if the suspect is not "subjected to the coercive atmosphere of a custodial confinement or to the public indignity of being personally detained." 462 U.S. at 709, 103 S.Ct. at 2645. Other factors led the Place Court to conclude that an arrest had taken place namely the 90-minute detention of Place's luggage, a longer period than the detention in this case, and the unreasonable lack; of diligence that the federal agents displayed in investigating Place, a factor not present in this case. From cases such as Dunaway and Berry, it is clear that the conditions of the detention are relevant to determining whether an arrest has taken place.

spent the entire period between Ralston's radio call and the arrival of the narcotics dog waiting in their own car, and Ralston did not remove the keys.[12] The videotape does not establish conclusively whether appellants ran the engine and heat in their car, but they were

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12. Several cases have indicated that retention of a suspect's airline ticket by the police is a relevant factor in determining whether a Terry stop ripened into an arrest. See, e.g., Florida v. Royer, 460 U.S. at 502, 103 S.Ct. at 132(plurality opinion); United States v. Mendenhall, 446 U.S. 544, 548, 555, 100 S.Ct. 1870, 1874, 1877, 64 L.Ed.2d 497 (1980)(opinion of Stewart, J., joined by Rehnquist, J.); United States v. Lopez-Pages, 767 F.2d 776, 779-80(11th Cir.1985); United States v. Elsoffer, 671 F.2d 1294, 1297(11th Cor.1982). We do not suggest however that appellants were free to leave simply because Ralston did not take the keys. the government has conceded that appellants were not free to leave once Ralston told Hardy that he intended to summon a narcotics dog.

certainly more comfortable than they would have been had Ralston detained them in the police car or kept them out in the cold. Appellants were also able to speak with each other freely and privately, a liberty that would have been absent had they been under de facto arrest.

Appellants urge that Ralston's refusal to allow them to wait in the nearest restaurant off the highway until the dog arrived was unreasonable and indicates that the detention was intrusive. We disagree. Appellants might have escaped had Ralston permitted them to drive to the restaurant in their own car. On the other hand, had Ralston driven them to a restaurant in this patrol car, he might well have converted the Terry stop into an arrest requiring probable cause and Miranda warnings.

Permitting appellants to proceed to a restaurant might also have extended the stop even further.

Finally, we address the length of the detention. Even after Sharpe, the duration of the stop remains an important factor, see Sharpe, 470 U.S. at 685, 686, 105 S.Ct at 1575, and we bear in mind the Supreme Court's admonition prior to Sharpe that 90 minutes in probably too long for a Terry stop. See Place, 462 U.S. at 709, 103 S.Ct. at 2645 ("The length of the detention alone precludes the conclusion that the seizure was reasonable in the absence of probable cause"). The investigative stop in this case lasted approximately fifty minutes, from about 9:34 p.m., when Ralston informed appellants that they would be detained for a narcotics sniff, until

about 10:25 p.m., when the narcotics dog alerted to the presence of drugs in the trunk.[13]

We confess to some unease on encountering a Terry stop lasting as long as fifty minutes. Cf. United States v.

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13. We exclude the eight to ten minutes during which Ralston attempted to secure consent to search the car. The atmosphere during that period was not so coercive as to render the negotiations between Ralston and appellants a "seizure." See supra note 7.

Furthermore, we cannot entirely divorce the duration of the stop from the other conditions of the detention. Twenty minutes' detention out of doors on a North Carolina spring morning, see Sharpe, 470 U.S. at 677, 105 S.Ct. at 1570, may be less intrusive than twenty minutes spent under a broiling sun, in a police station, or in a small airport office. Although appellants have argued that the weather during the stop in this case was windy and cold, a contention amply borne out by the videotape, we have already noted that they spent most of the period in their car.

Borys, 766 F.2d at 313 (75 minute detention was "at the outer bounds of the Constitution"); American Law Institute, Model Code of Pre-Arraignment Procedure 110.2(1) (1975) (suggesting twenty minutes as maximum duration for a Terry stop). On the facts of this case, however, we cannot say the length of the stop, by itself, invalidated the detention. The duration of the stop is, in fact, the only significantly troubling circumstance in this case. In view of other aspects to the stop demonstrating that the prolice acted with propriety, particularly Ralston's circumspection in avoiding any questioning of appellants during the waiting period and the for a narcotics dog, the doubts raised by the length of the detention are not sufficient for us to find that the stop

violated the fourth amendment.[14]

The case is less troubling than United States v. Alpert, 816 F.2d 958 (4th Cir. 1987), which also involved a fifty-minute detention.[15] In Alpert, the police removed the suspect's luggage from Charlotte Airport for a canine sniff at the police academy fifteen minutes away, even though they had been conducting surveillance of passengers arriving in Charlotte from Miami and could well have

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14. Accord United States v. Borys, 766 F.2d at 311 ("Continual interrogation for forty-five minutes would present a completely different picture from the sporadic questioning spanning three-quarters of an hour at issue here.").

15. The Fourth Circuit upheld the detention in Alpert. We do not express any opinion about what our conclusion would be on the facts of Alpert.

anticipated that they would have to detain a passenger's luggage. Trooper Ralston could not have known in advance precisely where or when he would encounter interstate highway drivers alerting his suspicions to narcotics trafficking, and the time spent in summoning a narcotics dog is more easily justified in this case. We therefore hold that the investigative detention of appellants did not exceed the permissible scope of a Terry stop.

Accordingly, the judgments of conviction are AFFIRMED.

HILL, Circuit Judge, specially concurring:

I concur in the result reached by the majority, but I do not fully agree with everything which is intimated by the

majority in Part II of its opinion. Whether "Operation Nighthawk" was in effect or influenced Trooper Ralston has no bearing on this case. Ralston observed the speeding Town Car and made an entirely legal and constitutional stop because of its violation of a Georgia traffic law. Just because an officer is pleased that a suspicious car violates traffic laws so that a stop is justified does not make the stop unconstitutional. One who violates traffic laws is not, because he appears to be a drug courier, immunized from arrest.

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1. To the extent United States v. Cruz 581 F.2d 535 (5th Cir.1978)(en banc) requires that a police officer have a

Moreover, if Georgia wants to use its highway patrol for no other purpose than to apprehend drug couriers, that is all right as long as it is done constitutionally. As noted in footnote 6 of the majority opinion, state troopers "shall...investigate violations of the criminal laws of this state." O.C.G.A. 35-2-32(b).

I agree with the sentence on page 17 of the majority opinion that the duration of the stop is the only troubling

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"proper" motive as well as probable cause when stopping a car, I would suggest abandoning that position as the Fifth Circuit did in United States v. Causey, 834 F.2d 1179, 1987 WL 23,392 (5th Cir.1987)(en banc). As the Causey court noted, "so long as police do no more than they are objectively authorized and legally permitted to do, their motives in doing so are irrelevant and hence not subject to inquiry." Id. at 1184.

circumstance in this case. However, as the majority explains, in view of the other aspects of the stop demonstrating that the police acted with propriety, the duration of the stop alone does not violate the Constitution.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 87-8855

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLES GILBERT HARDY and
BUDDY HUFFMAN, JR.,

Defendants-Appellants

Appeal from the United States District Court for the Northern District of Georgia

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING IN BANC

(OPINION September 19, 11 Cir., 1988, ___ F.2d___).

(November 4, 1988)

Before HILL and KRAVITCH, Circuit Judges, and TUTTLE, Senior Circuit Judge.

PER CURIAM:

(X) The Petition(s) for rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing in banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5, the Suggestion(s) of Rehearing In Banc are DENIED.

ENTERED FOR THE COURT:

/ Phyllis Kravitch
United States Circuit Judge

FILED NOV 4 1988
MIGUEL J. CORTEZ
CLERK